

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: May 25, 1994
CASE NO. 85-CTA-71

IN THE MATTER OF

UNITED STATES DEPARTMENT OF LABOR,

COMPLAINANT,

v.

COUNTY OF ESSEX,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981), the regulations at 20 C.F.R. Parts 675-689 (1990) and 29 C.F.R. Part 18 (1993). ^{1/} The case results from the Grant Officer's Final Determination disallowing certain costs claimed by the County of Essex, New Jersey (County), a CETA prime sponsor, pursuant to its CETA grants. The Grant Officer's action was based on an audit of the County's CETA grants for the period January 1, 1979 to September 30, 1982. Stipulations entered into by the Grant Officer and the County reduced the original disallowances from more than \$2.8 million to \$319,228 under Finding 1 and to

^{1/} CETA was repealed by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1791 (1988), on October 13, 1982, but CETA administrative and judicial proceedings pending on that date were not affected. 29 U.S.C. § 1591(e).

The last year that the CETA regulations were printed in the Code of Federal Regulations was 1990.

\$8,938.62 under Finding 2.

The Administrative Law Judge's (ALJ) Decision and Order (D. and O.) substantially reversed the Grant Officer's determination, affirming a disallowance of \$19,679 and allowing \$299,549 pertaining to Finding 1, and affirming the whole disallowance in Finding 2, for a total of \$28,617.68 to be repaid by the County to the U.S. Department of Labor. ^{2/} D. and O. at 12. The Grant Officer excepted to the ALJ's decision and the Secretary asserted jurisdiction in the case.

BACKGROUND

The audit of the County's CETA program encompassed nine grants budgeted for almost \$83 million and at least 11 subgrantees. Joint Exhibit 3, pp. 17-18, 57-58. Not all of the County's necessary documentary back up was available for the audit team during the time of the audit field work, which gave rise to auditor questioned costs. In the intervening six years, from the audit report to the ALJ's hearing, the County and the Grant Officer reduced the amount of the disallowed costs by approximately \$2.5 million. At the time of the hearing in January 1989, six items pertaining to disallowed costs charged to six grants still remained in dispute under Finding 1, and a single item in Finding 2.

^{2/} The ALJ apparently made an arithmetic error in calculating the amount of the disallowance pertaining to Grant # 34-9-105-48, understating the amount to be disallowed by \$929.55. D. and O. at 7, 11. The actual amount of the affirmed disallowance based on insufficient records should be \$4,221.55.

The hearing required a day and a half of testimony during which numerous documents were entered in evidence by the parties. The County's witnesses were the cognizant employee involved in the County's financial administration of CETA and an expert witness familiar with the audit process concerning CETA grants and subgrants for the State of New Jersey. The Grant Officer's witness was a senior auditor with the Department of Labor's Office of the Inspector General.

DISCUSSION

The ALJ wrote an extensive opinion, summarizing the testimony and evaluating the documentary evidence before him. His decision set forth his findings on the disputed issues of fact before him, detailed his conclusions and his reasons for reaching them. 29 C.F.R. §§ 18.43(b); .57(b). Although the Grant Officer contends that the ALJ misapplied CETA regulations and the statute, Statement of Exceptions at 2, and applied an inappropriate "relaxed level of review", Initial Brief at 2, a close reading of the testimony in conjunction with the pertinent evidentiary documents fails to uncover the egregious "**leap of logic**" that the Grant Officer alleges. Initial Brief at 8.

It appears that the Grant Officer attempts to make his case regarding his allegation that the ALJ erred in his review of the factual evidence submitted by the County by referring to a partial quote of the ALJ's decision which states "**the** audit report in this case is not a model of clarity and in view of the delay in issuing the same, greater latitude in accepting certain

records as ample documentation would be appropriate". Initial Brief at 2. However, when that phrase is placed in context it is apparent that the ALJ affirmed the importance of adequate documentation to support CETA expenditures and did not relax the standard of review to admit County's documents merely because of the delayed issuance of the audit report by the Inspector General. The ALJ says:

It is contended on behalf of the Grant Officer, in general, that the costs remaining at issue in this case have been disallowed because the Respondent could not substantiate and/or document these costs as it is required to do so by the Act ... and the regulations. . . . In support of such contention the Grant Officer cites ... Montsomerv County, Maryland v. United States Department of Labor,

I agree in principle with the Grant Officer's contention.
(Emphasis supplied).

* * *

[The **decision** then **distinguishes** the facts in Montsomerv County wherein the subgrantee kept no records, from the instant case where it had retained certain ledgers and financial records pertaining to various grants].

Furthermore, I agree that the audit report in this case is not a model of clarity and in view of the delay in issuing the same, greater latitude in accepting certain records as ample documentation would be appropriate. I note, however, in this reuward that the delay, per se, would not necessarily excuse a lack of documentation for CETA expenditures. (Emphasis supplied). See State of South Carolina v. United States Department of Labor, 795 F.2d 375 (4th Cir. 1986). With the foregoing in mind, I will turn to making my findings and conclusions for the individual grants.

D. and O. at 9-10.

The ALJ delineated the issues of fact which gave rise to the disallowances, related the pertinent testimony of the witnesses and evaluated the evidence presented at the hearing and subsequently submitted by the County. He set forth the reasons

for his determinations, deciding that the County failed to substantiate adequately all of its claimed costs in two instances of the six disputed disallowances in Finding 1, and partially affirmed the Grant Officer's disallowances. In a third instance, where the County admitted to no longer having the necessary records, the ALJ affirmed the total disallowance, as he did with the disallowance pertaining to Finding 2. D. and O. at 11-12. In this respect it is evident that his decisions were consonant with the principles set forth in Montsomery County.

In the remaining three instances in Finding 1, the ALJ reversed the Grant Officer's determinations and allowed the claimed costs. It is evident from the decision that the ALJ relied on the evidence available to him, which in some instances was not available to the auditors, as well as the testimony of the witnesses. The Grant Officer speculates as to the possibility of double billing of some of the costs in the documents subsequently presented by the County. The County responds by indicating that the final fiscal report reflected amounts consistent with only the amount actually claimed. The Grant Officer further raises his concern of the ALJ accepting unaudited cost reports at face value. While one might always strive for certitude in fiscal matters, in these circumstances I must defer to the ALJ as the trier of fact on the credibility of the witnesses and weighing the evidence.

The County did not except to the **ALJ's** D. and O., but requested in its submissions before me that repayment of the

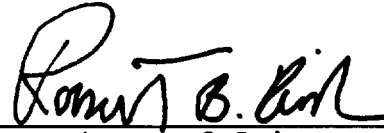
disallowed costs be waived. The Secretary has narrowly construed the CETA statutory and regulatory authority to waive disallowed costs, and the courts have affirmed that construction. This case does not fall within that purview. Chicano Education and Manpower Services v. U.S. Dep't of Labor, 909 F.2d 1320, 1327 (9th Cir. 1990); Blackfeet Tribe v. U.S. Dep't of Labor, Case No. 85-CPA-45, Sec. Dec., Dec. 2, 1991, slip op. Furthermore, it is the stated policy of the Department of Labor to require the repayment of funds based on unsubstantiated cost claims. This policy is consistent with the Congressional mandate evident in the reauthorization of the CETA program in 1978. Montgomery County, Maryland v. U.S. Dep't of Labor, 757 F.2d 1510 (4th Cir. 1985).

ORDER

The ALJ's Order requiring the County of Essex to pay to the United States Department of Labor the sum of \$28,617.68 IS MODIFIED to include \$929.55 of miscalculated unsubstantiated costs pertaining to grant 34-9-105-48, thereby increasing the total to be paid to \$29,547.23; with that modification, the ALJ's Order IS AFFIRMED.

This payment shall be from non-Federal funds. Milwaukee County v. Wisconsin, 771 F.2d 983, 993 (7th Cir. 1985), cert. denied, 476 U.S. 1140 (1986).

SO ORDERED.



Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: In the Matter of U.S. Department of Labor v.
County of Essex

Case No. : 85-CTA-71

Document : Final Decision and Order

A copy of the above-referenced document was sent to the following
persons on **MAY 25 1994** _____.



CERTIFIED MAIL

Norman Shulaner, Esq.
Finance and Government Affairs Section
Office of the County Counsel
Essex County Hall of Records
Newark, NJ 07102

Bogda M.B. Clarke, Chief
Finance and Employment Section
Office of the County Counsel
Essex County Hall of Records
Newark, NJ 07102

HAND DELIVERED

Associate Solicitor for Employment and
Training Legal Services
Attn: Vincent C. Costantino, Esq.
U.S. Department of Labor
200 Constitution Ave., N.W.
Room N-2101
Washington, DC 20210

REGULAR MAIL

Regional Solicitor
U.S. Department of Labor
201 Varick St., Room 707
New York, NY 10014
Attn: Jane Snell Brunner, Esq.

Bryan A. **Keilty**
Acting Administrator
Office of Financial and
Administrative Management
Charles Wood, Jr.
Division of Debt Management
James H. Norris
Division of Audit Closeout
and Appeals Resolution
U.S. Department of Labor
200 Constitution Ave., N.W.
Room N-4671
Washington, DC 20210

Nicholas R. Amato
County Executive
Essex County Hall of Records
Newark, NJ 07102

Hon. Nahum Litt
Chief Administrative Law Judge
Office of Administrative Law Judges
800 K Street, N.W.
Suite 400
Washington, DC 20001-8002

Hon. John M. Vittone
Deputy Chief Administrative Law Judge
Office of Administrative Law Judges
800 K Street, N.W.
Suite 400
Washington, DC 20001-8002

Hon. Joel R. Williams
Office of Administrative Law Judges
800 K Street, N.W.
Suite 400
Washington, DC 20001-8002